

Item No. 10
29.01.2024
Court. No. 19
GB

C.O. 4274 of 2023

Shyam Krishna Jaiswal
Vs.
Somasree Das & Ors.

*Mr. Aniruddha Chatterjee,
Mr. Tarak Nath Halder*

...for the Petitioner.

*Mr. Kushal Chatterjee,
Mr. Oishik Chatterjee*

...for the Opposite Parties.

1. The subject matter of this revisional application are the orders dated August 1, 2023 and October 17, 2023, both passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah, District – 24 Parganas (South) in Misc. Case No.60 of 2023.
2. By the order dated August 1, 2023, the learned court had directed occupational charges of Rs.35,000/- per month to be paid by the petitioner, who had suffered a decree of eviction. Such payment was to be made from the date of the order of stay, that is, on and from August 1, 2023. The petitioner/defendant no.2 prayed for modification of the said order on the ground that the quantum was exorbitant. The decree-holder also prayed for modification of the same on the ground that the occupational charges should be paid from the date of the decree. On October 17, 2023, both the applications filed in connection with Misc. Case No.60 of 2023 were taken up for consideration. The learned court rejected the applications.

3. Mr. Aniruddha Chatterjee, learned advocate appearing on behalf of the petitioner, submits that no reasons were assigned by the learned court while arriving at the quantum of occupational charges at the rate of Rs.35,000/- per month. His contention is that the property in question measures around 80 sq. ft. A small shop is being run from the said premises. The premises are reasonably old and the amount of occupational charges of Rs.35,000/- was excessive.
4. According to Mr. Chatterjee, the learned court did not come to any comparative analysis with regard to any other premise in and around the locality, in order to arrive at such decision. The quantum was fixed randomly, on the basis of a lease agreement produced by the decree-holder. The contents of the lease agreement would show that the property involved in the said lease, was double the size of the property involved in the suit. Moreover, the alleged shop mentioned in the lease agreement did not exist.
5. According to Mr. Chatterjee, without any reference to the other premises in the locality and without evidence on the market rent, such premises would fetch, the amount of Rs.35,000/- was fixed arbitrarily.
6. Mr. Kushal Chatterjee, learned advocate appearing on behalf of the plaintiffs submits that the lease agreement which was produced, may not have been dealt with in great detail, but the lease rent was fixed in 2013 when the rent was Rs.35,000/- for a 138 sq. ft. shop. There was a

condition that there would be an increment of 15% every three years. The lease was for nine years. Going by such covenants in the lease deed, the present rent would be more than Rs.45,000/-. Thus, the court had been lenient in allowing Rs.35,000/- to be paid as occupational charges per month.

7. Mr. Chatterjee further submits that the decision of the learned court for payment of occupational charges from the date of the order of stay was also erroneous and the application for modification filed by Mr. Kushal Chatterjee's client should have been allowed by directing Rs.35,000/- as occupational charges to be paid on and from the date of the decree.
8. Having heard the learned advocates for the respective parties. It appears to this Court that the contentions of Mr. Aniruddha Chatterjee, that the shop in respect of which the lease document had been submitted, does not exist, was not urged before the learned court. Mr. Kushal Chatterjee vehemently objects to contention that the shop mentioned in the lease document did not exist. Moreover, the learned court did not assign any reason as to why Rs.35,000/- would be a reasonable amount. The court did not discuss the contents of the lease document.
9. In my opinion, there is a factual dispute, which would have to be gone into by the learned court below. Whether Shop Room No.2, lying and situated on the ground floor of Premises No.P-41 C.I.T. Road, Scheme-VIIM, exists or not, ought to be raised before the learned court because

such factual aspect would have to be gone into by the learned court.

10. The contention of Mr. Kushal Chatterjee is that the order suffers from irregularity and the same should be modified in terms of the principles laid down by the Hon'ble Apex Court with regard to payment of occupational charges from the date of the decree. Such contention should also be decided by the learned court. The learned court has not at all considered the rival contentions of the parties, at the time of passing the orders impugned.
11. The orders impugned are set aside. The matter is sent back to the learned court for fresh decision. All parties are entitled to file their documents by way of affidavits for adjudication of the quantum of occupational charges and the date from which the same should be paid. The defendants have been occupying the premises since long without payment of any charges, except depositing the monthly rent of Rs.200/- before the learned rent controller. Thus, an ad hoc deposit of Rs.1,00,000/- shall be made in court. Such deposit shall be adjusted with further payment as per the final decision of the learned court. The execution proceeding will remain stayed for two weeks and will continue till disposal of the application, if the payment is made as directed hereinabove. The application for stay will be disposed of within two months from date. Failure to deposit Rs.1,00,000/-, as directed, will allow the decree-holder to proceed with the execution.

12. It is also expected that the application under Order 9 Rule 13 of the Code of Civil Procedure shall be disposed of expeditiously.
13. Accordingly, the revisional application is disposed of.
14. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)